"essential" an element of their contract as to make it interstate commerce. What was said in *Marienelli* v. *United Booking Offices of America* (*supra*) is almost equally applicable to the principal case, "Undeniably certain aspects of the business are interstate commerce, as, for instance, the contracts made by the booking companies under which the performers must go from state to state, throughout the circuit, acting here and there, and fulfilling their contracts as much by the travel as by the acting."

CONSTITUTIONAL LAW—RENT REGULATION UNDER POLICE POWER. — The New York Rents Laws and the Ball Rent Law enacted by Congress for the District of Columbia were passed upon by the Supreme Court of the United States on April 18. *Held, (four justices dissenting)*—the business of housing may be "affected with a public interest," and subject to regulation under the police power of the state. *Brown Holding Co.* v. *Feldman,* (No. 731, U. S. S. C., April 18, 1921); *Block* v. *Hirsh,* (No. 640, U. S. S. C., April 18, 1921).

The details of this legislation and the general principles determinative of its constitutionality are discussed at some length in 19 MICH. L. REV. 599. The decision is the logical development of *Munn* v. *Illinois,* 94 U. S. 113, and the more recent pronouncement of the same doctrine in *German Alliance Insur. Co.* v. *Lewis,* 233 U. S. 389. Distinctions are suggested, both in the dissenting opinion in the principal cases, and elsewhere, but none which cannot easily be disposed of. It is suggested that the conditions assigned as the basis for regulation of the housing industry are temporary and artificial, whereas the conditions justifying the regulation of rates for fire insurance and grain elevators are permanent and natural. Further, it is contended that the chief limitation hitherto placed upon the doctrine is transgressed by the rent legislation, namely, the right to quit business at any time the owner desires. As to the first distinction it may be answered that it can at most be only a consideration relating to policy. Legislative protection has been extended and upheld as against artificial monopolies, and natural monopolies. Why should the power be denied to combat a new economic anomaly, certainly far more serious in its immediate aspect than many of the others, namely, the temporary shortage of a necessary of life, making possible the charging of extortionate prices? The power is the same. The basis on which it rests is the same: the need of relief from economic oppression where the public is otherwise helpless. Justice Holmes arrives at the same conclusion in *Block* v. *Hirsh, supra,* by another method of approach. "If to answer one need," he says, "the legislature may limit height to answer another it may limit rent. * * * The reasons are of a different nature but they certainly are not less pressing." This also involves only a perception of substance as distinct from form, and a recognition of the unity of the police power, in its varying applications. To the objection that the landlord cannot retire from the business of renting as the owner of the elevator may retire from storing grain, Justice Holmes replies that in the case of public utilities particularly, the right of quitting is illusory at best,

and further that the regulation is of a temporary duration only. It may be added that if the landlord desires the house for his own use he can get it under the rent legislation, and it is difficult to sympathize with landlords for the loss of the right to let houses remain empty, rather than to accept reasonable returns from the property. Widespread objection to the rent decisions has been made, particularly in the dissenting opinions on the ground of danger of possible extensions of the decisions. Do they really mean, however, that shoelaces and chewing-gum are now subject to regulation or that even rentals may be regulated in future under any and all conditions? The Supreme Court has tried hard to say that it does not, that there really is some significance to the phrase "business clothed with a public interest." It is said that the regulation is justified because housing is a necessary of life, and a shortage exists. Such conditions obviously have not always existed nor will they always exist. Is the court entirely helpless when the legislature says that they do exist? Courts declare limitations of policy in other cases, and clearly can do so here. An outstanding feature of the recent decisions is the defection of Mr. Justice McKenna who rendered the dissenting opinions. "If such power exist what is its limit," he asks, "and what its consequences? * * * The wonder comes to us, what will the country do with its new freedom?" No better answer can be made than that which the Justice himself has already given in *German Alliance Insur. Co.* v. *Lewis, supra.* "But it is said that the reasoning of the opinion has the broad reach of subjecting to regulation every act of human endeavor and the price of every article of human use. We might without much concern leave our discussion to take care of itself against such misunderstanding or deductions. * * * Against that conservatism of the mind which puts to question every new act of regulating legislation and regards the legislation as invalid or dangerous until it has become familiar, government—state and national—has pressed on in the general welfare and our reports are full of cases where in instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the Constitution of the United States. The dread of the moment having passed, no one is now heard to say that rights were restrained or their constitutional guarantees impaired." See also 19 MICH. L. REV. 74.

CONSTITUTIONAL LAW—STATES AND FEDERAL GOVERNMENT—CO-OPERATION IN WAR-TIME LEGISLATION.—Defendant was convicted for violation of a Minnesota statute making it unlawful to interfere with, or discourage the enlistment of men in the military or naval service of the United States or the state, or to advocate non-participation in the carrying on of the war. The case came before the Federal Supreme Court through proceedings in error, after the Supreme Court of Minnesota had affirmed the conviction. The federal question presented was whether or not the power of Congress to legislate concerning the same subject-matter was exclusive. *Held,* statutes in aid of the federal legislation, and not in conflict therewith can stand,